In the Supreme Court of the United States

OCTOBER TERM, 1994

CITY OF EDMONDS, PETITIONER

v.

OXFORD HOUSE, INC., ET AL.

AND

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether a municipal zoning ordinance, which limits the number of unrelated but not the number of related persons who may live together in a single-family residential zone, falls within the Fair Housing Act's exemption for "reasonable * * * restrictions regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. 3607(b)(1).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-30a) is reported at 18 F.3d 802. The opinion of the district court (Pet. App. 1b-13b) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 14, 1994. The petition for a writ of certiorari was filed on June 13, 1994 (a Monday), and was granted on October 31, 1994. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent provisions of the Fair Housing Act state:

> [I]t shall be unlawful * * * [t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of * * * that buyer or renter.

42 U.S.C. 3604(f)(1)(A).

> For purposes of this subsection [regarding discrimination in sale or rental due to handicap], discrimination includes * * * a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [handicapped] person[s] equal opportunity to use and enjoy a dwelling.

42 U.S.C. 3604(f)(3)(B).

> Nothing in this subchapter limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this subchapter regarding familial status apply with respect to housing for older persons.

42 U.S.C. 3607(b)(1).

Pertinent provisions of the Edmonds Community Development Code (ECDC) provide as follows:

> CHAPTER 16.20
> RS—SINGLE-FAMILY RESIDENTIAL
>
> * * * * *
>
> 16.20.010 USES

> A. *Permitted Primary Uses.*
>
> 1. Single-family dwelling units.
>
> * * * * *

See J.A. 225.

> 21.30.010 FAMILY
>
> Family means an individual or two or more persons related by genetics, adoption, or marriage, or a group of five or fewer persons who are not related by genetics, adoption, or marriage and none of whom are wards of the court unless such wards are related by genetics, adoption, or marriage to all other members of such group living together in a dwelling unit.

See J.A. 250.

Section 503(b) of the Uniform Housing Code (1988), which Edmonds has adopted, see ECDC § 19.10.000 (J.A. 248), states:

> **Floor Area.** Every dwelling unit shall have at least one room which shall have not less than 120 square feet of floor area. Other habitable rooms, except kitchens, shall have an area of not less than 70 square feet. Where more than two persons occupy a room used for sleeping purposes, the required floor area shall be increased at the rate of 50 square feet for each occupant in excess of two.

See J.A. 180.

STATEMENT

1. Oxford Houses are group homes for persons recovering from alcoholism or drug addiction, and who have become drug- and alcohol-free. Pet. App. 8a. They

operate under rules providing for democratic self-governance, financial self-sufficiency, and immediate expulsion of any resident found to use alcohol or drugs while a resident. *Id.* at 9a; see 42 U.S.C. 300x-25(a)(6) (Supp. V 1993); S. Rep. No. 379, 101st Cong., 2d Sess. 118 (1990) (describing Oxford House program). Those three basic Oxford House rules are therapeutically based, and their efficacy has not been contested in this litigation.

Experience has shown that 8 to 12 residents are generally needed for Oxford Houses to function successfully, J.A. 107 (¶ 9), and the parties stipulated that Oxford House-Edmonds, the home involved in this case, could not be maintained with fewer than six residents. Pet. App. 9a, 6b; J.A. 107 (¶ 9). That minimum-size requirement for a successful group residence for recovering substance abusers is not unusual. Cf. 42 U.S.C. 300x-25(a)(1) (Supp. V 1993) (establishing federal loan fund for group homes of not less than six recovering substance abusers). A minimum of six residents ensures that any resident experiencing problems related to his or her recovery is likely to find another resident at home who is able to provide emotional support. Pet. App. 9a, 6b; J.A. 104 (¶ 9), 106 (¶ 3), 107 (¶ 9). The minimum number of residents needed in a house also depends on the number of equal shares into which the total household expenses must be divided in order to make the expenses affordable to persons working at or near the minimum wage (as most Oxford House residents do). Pet. App. 9a, 6b; J.A. 103-104 (¶¶ 5, 7, 9), 107 (¶ 9).

In 1988, Congress amended the Fair Housing Act (FHA) to prohibit discrimination in housing against persons with handicaps. Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, § 6(a), (b)(1) and (c), 102 Stat.

1620-1622.[1] The purpose of the amendment was to "end the unnecessary exclusion of persons with handicaps from the American mainstream." H.R. Rep. No. 711, 100th Cong., 2d Sess. 18 (1988) (J.A. 134). Persons recovering from alcoholism and drug addiction are considered persons with handicaps under the amendment, so long as they are not engaged in "current, illegal use of or addiction to a controlled substance." 42 U.S.C. 3602(h). See H.R. Rep. No. 711, *supra*, at 22 (J.A. 144-145); *United States* v. *Southern Management Corp.*, 955 F.2d 914, 922-923 (4th Cir. 1992).

The 1988 amendment made it unlawful to "discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of * * * that buyer or renter." 42 U.S.C. 3604(f)(1)(A). Because handicapped persons often have special needs, Congress realized that according them the same treatment as is given to other individuals would not always lead to equal housing opportunities. H.R. Rep. No. 711, *supra*, at 25 (J.A. 150-151). Congress therefore defined "discrimination" against handicapped individuals to include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such

[1] When originally enacted in 1968, the FHA prohibited discrimination on the basis of race, color, religion, or national origin. See Pub. L. No. 90-284, Tit. VIII, §§ 804-806, 82 Stat. 83-84. In 1974, Congress extended the Act's coverage to prohibit housing discrimination on the basis of sex. See Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 808(b), 88 Stat. 729. The 1988 FHA amendments, in addition to extending coverage to handicapped persons, also prohibited discrimination based on familial status. Pub. L. No. 100-430, § 6(b)(1) and (2), (c) and (d), 102 Stat. 1622-1623. The amended statute defines "familial status" as discrimination against parents or other custodial persons domiciled with children under the age of 18. 42 U.S.C. 3602(k).

accommodations may be necessary to afford such person[s] equal opportunity to use and enjoy a dwelling." 42 U.S.C. 3604(f)(3)(B).[2] That provision thus imposes affirmative obligations to accommodate the needs of persons with disabilities and provides that failure to do so may violate the FHA.[3]

Congress also made clear that the prohibition against discrimination on the basis of handicap applies to municipal zoning rules and practices. H.R. Rep. No. 711, *supra*, at 24 (J.A. 147-149). Especially relevant to this case is the fact that Congress was specifically concerned about the impact of municipal zoning laws on persons whose handicaps require them to live in group homes. One "method of making housing unavailable to people with disabilities has been the application or enforcement of otherwise neutral rules and regulations on * * *

[2] That provision does not apply to discrimination on the other bases banned by the FHA—*i.e.*, to discrimination on the basis of race, color, religion, national origin, sex, or familial status.

[3] The FHA itself does not define "reasonable accommodation." Congress, however, borrowed the "reasonable accommodation" language from cases interpreting Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and Congress intended those decisions to supply the governing standard. See H.R. Rep. No. 711, *supra*, at 25 & n.66 (J.A. 150), citing *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979). *Davis* recognized that an accommodation is not required if it either imposes "undue financial and administrative burdens," *id.* at 412, or requires a "fundamental alteration in the nature of a program," *id.* at 410. Accord *Alexander* v. *Choate*, 469 U.S. 287, 300 (1985). Thus, a requested accommodation in zoning practices is not required if it would either impose undue burdens on the municipality or require a fundamental change in the zoning scheme. See H.R. Rep. No. 711, *supra*, at 25 & n.66 (J.A. 150). Whether an accommodation is reasonable under this standard is a fact-specific inquiry necessarily decided on a case-by-case basis.

land-use." *Ibid.* (J.A. 148-149). In particular, Congress emphasized its concern with zoning rules that "have the effect of limiting the ability of [handicapped] individuals to live in the residence of their choice in the community," *ibid.* (J.A. 148), especially those restrictions that "have the effect of excluding * * * congregate living arrangements for persons with handicaps," *id.* at 23 (J.A. 147). One of Congress's principal reasons for adding the prohibition against discrimination on the basis of handicap to the FHA was to require municipalities to make reasonable accommodation in such "zoning decisions and practices." *Id.* at 24 (J.A. 148).

At the same time that Congress added the prohibition of handicap discrimination to the FHA, it also prohibited discrimination on the basis of familial status and created the maximum-occupancy exemption at issue in this case. The maximum-occupancy exemption provides that the FHA does not apply to "any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. 3607(b)(1). The committee report on the 1988 amendments described the exemption as a provision "relating to the familial status provisions," designed to allow jurisdictions to, for example, "limit the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit," even when that would result in the exclusion of large families from particular units. H.R. Rep. No. 711, *supra*, at 31 (J.A. 162-163). The report further provided that such maximum-occupancy restrictions must apply "to all occupants." *Ibid.* (J.A. 163).

In 1988, Congress also enacted Section 2036 of Title II of the Anti-Drug Abuse Act of 1988 (ADAA) to encourage the development of Oxford Houses and similar group

homes. Pub. L. No. 100-690, 102 Stat. 4202, 42 U.S.C. 300x-4a (repealed), codified in current form at 42 U.S.C. 300x-25 (Supp. V 1993). That legislation requires States receiving certain federal block grants to make loans available to help establish Oxford Houses and other group homes for former substance abusers. *Ibid.* Congress used the Oxford House program as a model in establishing the ADAA loan program. 134 Cong. Rec. 33,140-33,141 (1988) (remarks of Rep. Madigan); see also S. Rep. No. 379, *supra*, at 117 ("Oxford House was the underlying model for section 2036 of the Anti-Drug Abuse Act of 1988.").

The ADAA reflects the view that "after detoxification and inpatient rehabilitation many [people] need to live in an alcohol- and drug-free environment for some time in order to avoid relapse," and that Oxford Houses "provide the kind of support necessary for [those] individuals." 134 Cong. Rec. 33,140, 33,141 (1988) (remarks of Rep. Madigan). See also H.R. Rep. No. 592, 101st Cong., 2d Sess. 21 (1990) ("The Oxford House concept represents a 'missing link' in the treatment process."). To qualify for a loan under the ADAA, a group home must have at least six residents and they must agree to abide by the three basic Oxford House rules. 42 U.S.C. 300x-25(a)(1) and (6) (Supp. V 1993). Pursuant to the ADAA, the State of Washington has made start-up loans to several Oxford Houses. J.A. 57.

2. Oxford House-Edmonds received a start-up loan under the ADAA. J.A. 57 (¶ 3), 120 (¶ 16). It operates under a charter issued by Oxford House, Inc., and it leases a house in Edmonds, Washington. Pet. App. 9a, 4b-5b; J.A. 105 (¶ 1). Approximately 10 to 12 unrelated persons recovering from alcohol or drug addiction live there as a single housekeeping unit. Pet. App. 8a-10a, 5b; J.A. 105-106 (¶¶ 1-4). The parties stipulated in the

district court that the residents of Oxford House-Edmonds are handicapped within the meaning of the FHA. Pet. App. 8a-9a, 8b; J.A. 106 (¶ 4). The residents provide each other with mutual support that is fundamental to the Oxford House approach to remaining free from addiction. *Ibid.* (¶ 3).

Oxford House-Edmonds is in a residential neighborhood, removed from "commercial zones, liquor stores, and illicit drug activity to minimize the likelihood of relapse by a resident." Pet. App. 9a; J.A. 106 (¶ 6). It has six bedrooms. J.A. 104 (¶ 7). Oxford House-Edmonds chose the house because it was sufficiently large to accommodate at least 10 residents, near public transportation, affordable, and in a neighborhood without apparent drug activity. J.A. 103-104 (¶¶ 6-7).

Under petitioner's zoning code, the neighborhood in which Oxford House-Edmonds is located is zoned single-family residential, authorizing only groups defined in the code as "families" to occupy a residential structure. Pet. App. 10a, citing Edmonds Community Development Code (ECDC) § 16.20.010; J.A. 106 (¶ 6). The zoning code defines "family" as any number of persons related by adoption, marriage, or genetics, or five or fewer unrelated persons. ECDC § 21.30.010 (J.A. 250). Because Oxford House-Edmonds needs six or more people, who are ordinarily unrelated, to operate and to qualify for a start-up loan under the ADAA, it cannot comply with the zoning code's definition of family. Pet. App. 10a; J.A. 104 (¶ 9). The parties stipulated, however, that the impact on city services and infrastructure of Oxford House-Edmonds is no different from the impact of an equally numerous group of related persons of the same ages at the same location. J.A. 110 (¶ 14).

3. After learning that an Oxford House had located in Edmonds, petitioner issued criminal citations to the

owner and to one of the residents of the house for violating the family-composition provision of the zoning code. Pet. App. 10a; J.A. 107 (¶ 10).[4] Petitioner also sought a declaratory judgment in federal district court that its family-composition provision was exempt from the FHA. Pet. App. 11a; J.A. 40-55.[5] Respondent Oxford House counterclaimed, seeking declaratory and injunctive relief and damages, based on petitioner's failure to make a reasonable accommodation for the Oxford House under Section 804(f)(3)(B) of the FHA, 42 U.S.C. 3604(f)(3)(B). J.A. 60, 69-79. The United States filed a separate action on the same grounds, J.A. 80-85, and the two cases were consolidated. Pet. App. 11a-12a, 4b-5b.

On cross-motions for summary judgment, the district court granted judgment for petitioner. Pet. App. 1b-13b. The court assumed that petitioner could make a reasonable accommodation by "agreeing to waive the five-person limit as to Oxford House-Edmonds." Pet. App. 9b. The court held (*id.* at 9b-12b), however, that petitioner's family-composition rule was exempt from scrutiny under the FHA as a "reasonable * * * restriction[] regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. 3607(b)(1).

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[4] Petitioner later voluntarily suspended its criminal enforcement actions pending resolution of this litigation. Pet. App. 10a-11a; J.A. 107-108 (¶ 11). It refused, however, to accommodate operation of Oxford House-Edmonds on a permanent basis. Pet. App. 11a; J.A. 107-108 (¶ 11).

[5] The City of Everett, Washington, originally was a plaintiff in the declaratory judgment action and had asserted claims against the Washington State Building Code Council and another Oxford House, J.A. 40, but the district court dismissed Everett's complaint upon stipulation of the parties. Pet. App. 3b-4b; J.A. 30. Those three entities were not parties in the court of appeals, and are not parties before this Court.

The court concluded that the "plain language of this exemption" encompassed the rule and that "[n]othing in the legislative history of the FHA require[d] a different interpretation." Pet. App. 9b-10b. The court also concluded that petitioner's five-unrelated-persons aspect of the definition of "family" was a "reasonable" occupancy limit because it advanced municipal zoning interests. *Id.* at 11b. Finally, it concluded that petitioner "cannot be faulted for exempting related persons" from its five-person limit, because "such a restriction on traditional families would probably violate the Due Process Clause of the Fourteenth Amendment." *Ibid.*

4. The court of appeals reversed. Pet. App. 1a-30a. The court noted first that the FHA should be construed "generously," *id.* at 13a, citing *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205, 212 (1972), and that the exemptions to the coverage of such a "broad remedial statute" must be read narrowly, Pet. App. 13a, citing *A.H. Phillips, Inc.* v. *Walling*, 324 U.S. 490, 493 (1945). The court held that the ordinance was not clearly covered by the exemption applicable to "restrictions regarding the maximum number of occupants permitted to occupy a dwelling," because although the ordinance restricts the number of *unrelated* persons who can live together, it "does not regulate the maximum number of related occupants." Pet. App. 17a.

The court of appeals held that the legislative history of the exemption resolved any doubts about whether the challenged ordinance is exempt from the anti-discrimination provisions of the FHA. It noted that Congress intended 42 U.S.C. 3607(b)(1) to exempt only restrictions that apply uniformly to "all occupants," not rules that differentiate between related and unrelated persons. Pet. App. 19a-21a, citing H.R. Rep. No. 711, *supra*, at 31 (J.A. 163). The court pointed to petitioner's

minimum-square-footage requirements for bedrooms as an example of a restriction that applies to all occupants and that is exempt from the FHA under Section 3607(b)(1). Pet. App. 20a-21a & n.4, citing ECDC § 19.10.000.

The court of appeals also concluded that its reading of the exemption was supported by the FHA's purpose "to protect the right of handicapped persons to live in the residence of their choice in the community." Pet. App. 24a, citing H.R. Rep. No. 711, *supra*, at 24 (J.A. 148). As the court explained,

> [e]xempting Edmonds' ordinance as an occupancy restriction would undermine the purposes of the FHAA. Many cities in this country have adopted similar use restrictions. Applying the exemption would insulate these single-family residential zones from the sweep of FHAA requirements.

Pet. App. 25a (citations omitted).[6] The court held that zoning decisions under ordinances like petitioner's must be subjected to review under the FHA, "or the policies the FHAA seeks to enforce will be frustrated." *Id.* at 26a.

Finally, the court of appeals disagreed with the Eleventh Circuit's interpretation of the exemption in *Elliott* v. *City of Athens*, 960 F.2d 975, cert. denied, 113 S. Ct. 376 (1992). Pet. App. 26a-29a. *Elliott* had reasoned that, because limits on the number of unrelated persons who can live together in residential areas are constitutional under *Village of Belle Terre* v. *Boraas*, 416 U.S. 1 (1974), Congress could not have intended to apply the

[6] The court of appeals referred to both the Fair Housing Act and the Fair Housing Amendments Act of 1988 as the "FHAA." We refer herein to the Act, as amended, as the "FHA."

FHA to such rules. The court of appeals rejected that reasoning. Pet. App. 27a. In its view,

> the question is not whether Edmonds' ordinance could withstand a constitutional challenge brought by unrelated persons as in *Belle Terre*. It is whether Congress intended to apply the substantive standards of the FHAA to the ordinance.

Id. at 28a. The FHA's requirements that a city's zoning policies reasonably accommodate handicapped persons can, the court held, exceed the constitutional floor, "requir[ing] something more than the enactment of minimally constitutional and facially neutral zoning ordinances." *Id.* at 29a. The court remanded the case to the district court for evaluation of whether petitioner had unreasonably failed to accommodate Oxford House-Edmonds under the FHA. *Id.* at 29a-30a.

5. On May 17, 1993, after briefing on appeal, the State of Washington enacted a statewide law that makes ECDC § 21.30.010 invalid as applied to a "residential structure occupied by persons with handicaps," such as Oxford House-Edmonds. The new statute, which became effective on July 25, 1993, provides:

> No city may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3602).

Wash. Rev. Ann. Code § 35.63.220 (West Supp. 1994).

SUMMARY OF ARGUMENT

The court of appeals correctly held that petitioner's family-composition rule is not a "reasonable * * * restriction[] regarding the maximum number of occupants permitted to occupy a dwelling," 42 U.S.C. 3607(b)(1), and is therefore not exempt from scrutiny under the Fair Housing Act (FHA). The language, purpose, and legislative history of the exemption, and the underlying purposes of the FHA, all demonstrate that the exemption insulates only occupancy limits that impose a maximum on the number of *all* potential occupants (rather than only some subclass of occupants) and that are therefore designed to prevent the overcrowding of dwellings.

Petitioner's family-composition rule satisfies neither of those criteria. It restricts only the number of unrelated persons, not the number of all occupants. The rule also is not designed to prevent overcrowding, because it applies regardless of the size of the dwelling at issue. Congress enacted Section 3607(b)(1) against the backdrop of a well-established distinction between maximum-occupancy restrictions, which are aimed at preventing overcrowding of dwellings, and family-composition rules (such as ECDC § 21.30.010), which are designed to foster a "family" neighborhood character. The language of the exemption shows that it authorizes only the former category of restrictions.

The legislative context in which the exemption was adopted further confirms its narrow focus. The exemption was enacted in response to the concern of some Members of Congress that the new prohibition on discrimination based on familial status would require landlords to lease even the smallest apartments to large families with many children. That concern related only

to preserving the applicability of maximum-occupancy restrictions, not to permitting family-composition rules to exclude handicapped people from residential neighborhoods.

This Court is faced in this case with only the threshold question whether petitioner's family-composition rule is entirely exempt from scrutiny under Section 3607(b)(1). The determination whether petitioner violated the FHA's reasonable-accommodation requirement by refusing to accommodate Oxford House-Edmonds in the application of ECDC § 21.30.010 requires a fact-specific inquiry that should be made in the first instance by the district court. Subjecting family-composition rules to scrutiny under the FHA would, in any event, have a practical impact much narrower than petitioner suggests. Family-composition rules would not generally be invalidated under the court of appeals decision, which simply permits the courts to determine, on a case-by-case basis, whether discrimination is present and whether an accommodation should be required for the particular group of individuals seeking it. Even such an accommodation could not be required if it would unduly burden the municipality or fundamentally alter its zoning scheme.

Construing the FHA completely to exempt single-family zoning from the statute would, on the other hand, undermine the FHA's purpose to provide handicapped persons with meaningful opportunities to live in desirable and wholesome residential environments. The reasonable-accommodation requirement is the principal means through which Congress sought to prevent discrimination against the handicapped in the provision and availability of housing.

ARGUMENT

PETITIONER'S FAMILY-COMPOSITION RULE DOES NOT FALL WITHIN THE FAIR HOUSING ACT'S EXEMPTION FOR REASONABLE RESTRICTIONS REGARDING THE MAXIMUM NUMBER OF OCCUPANTS PERMITTED TO OCCUPY A DWELLING

A. The Statutory Exemption By Its Terms Does Not Apply To Petitioner's Rule

1. *The exemption should be narrowly construed.* The starting point for determining the scope of the 42 U.S.C. 3607(b)(1) exemption is the language of that provision. See *Board of Educ.* v. *Mergens*, 496 U.S. 226, 237 (1990). In reading the statutory text, this Court adheres to the principle that exemptions—especially from remedial statutes—must be construed narrowly. See *John Hancock Mutual Life Ins. Co.* v. *Harris Trust & Savings Bank*, 114 S. Ct. 517, 524-525 (1993); *Commissioner of Internal Revenue* v. *Clark*, 489 U.S. 726, 739 (1989); *A.H. Phillips, Inc.* v. *Walling*, 324 U.S. 490, 493 (1945); *Piedmont & Northern Ry.* v. *ICC*, 286 U.S. 299, 311-312 (1932). The FHA "broadly prohibits discrimination in housing throughout the Nation," *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91, 93 (1979), and its "broad and inclusive" prohibition must be given "generous construction," *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205, 209, 212 (1972). Conversely, any exemptions from that broad language must receive a narrow reading, reaching only those provisions that are "plainly and unmistakably within its terms and spirit." *A.H. Phillips*, 324 U.S. at 493. Accord *Citicorp Indus. Credit, Inc.* v. *Brock*, 483 U.S. 27, 35 (1987). As the party seeking the benefit of the exemption, petitioner bears the burden of demonstrating

that its family-composition rule clearly fits within the statutory exemption. See *United States* v. *First City Nat'l Bank*, 386 U.S. 361, 366 (1967).

2. *The language of the exemption is clear.* There can be no plausible claim that petitioner's rule "plainly and unmistakably" comes within the terms and spirit of the maximum-occupancy exemption. *A.H. Phillips*, 324 U.S. at 493. Indeed, the family-composition rule clearly falls outside the plain language of the FHA exemption.

The exemption states:

> [n]othing in this subchapter limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

42 U.S.C. 3607(b)(1). Petitioner's definition of "family" for purposes of single-family zoning is as follows:

> an individual or two or more persons related by genetics, adoption, or marriage, or a group of five or fewer persons who are not related by genetics, adoption, or marriage * * *.

Edmonds Community Development Code (ECDC) § 21.30.010 (J.A. 250).

The text of Section 3607(b)(1) plainly does not include ECDC § 21.30.010. The statutory exemption expressly refers to restrictions regarding "the maximum number of occupants." Petitioner's zoning ordinance, however, does not impose such a restriction, since it does not place a limit on the total number of occupants, but only on the number of occupants who are unrelated to each other. At the same time, it permits an unlimited number of related persons to live in any home in a single-family zone.

Petitioner's ordinance is thus a regulation not of the number of persons who may occupy a dwelling, but of the

biological and legal relationships among the persons allowed to live in "single-family" neighborhoods. Rules of that type are intended to regulate the character of zoned areas, not "the maximum number of occupants permitted to occupy a dwelling." As we show below, there is a clear and well-established difference between the two kinds of regulations. Congress clearly intended to apply the absolute exemption from the FHA only to maximum-occupancy restrictions, not to family-composition rules.

Petitioner has, in fact, adopted a housing code—the Uniform Housing Code (UHC)—that includes a provision illustrative of the type of regulation of "the maximum number of occupants permitted to occupy a dwelling" to which Section 3607(b)(1) applies. See ECDC § 19.10.000 (J.A. 248).[7] The UHC chapter entitled "Space and Occupancy Standards" provides in relevant part that

[7] The UHC, which is used primarily by jurisdictions in the western States and parts of the midwest, is one of three model housing codes in the United States. The other two are The BOCA National Property Maintenance Code (in use primarily in the northeast and the eastern part of the midwest), and the Standard Housing Code (in use primarily in the southern States). The latter two model codes prescribe minimum square footage per occupant for both living and sleeping areas. See The BOCA National Property Maintenance Code §§ PM-405.3, PM-405.5 (Building Officials & Code Administrators Int'l, Inc. 4th ed. 1993); Standard Housing Code §§ 306.1, 306.2 (Southern Building Code Congress Int'l, Inc. 1991). The American Public Health Association and the Centers for Disease Control have also adopted recommended maximum-occupancy standards, defining "Permissible Occupancy" as "the maximum number of individuals permitted to reside in a dwelling unit, or rooming unit," APHA-CDC Recommended Minimum Housing Standards § 2.51, at 12 (1986), and prescribing such a standard in terms of square feet of floor space, *id.* § 9.02, at 37.

> [e]very dwelling unit shall have at least one room which shall have not less than 120 square feet of floor area. Other habitable rooms, except kitchens, shall have an area of not less than 70 square feet. Where more than two persons occupy a room used for sleeping purposes, the required floor area shall be increased at the rate of 50 square feet for each occupant in excess of two.

UHC § 503(b), at 15 (1988) (J.A. 180). That square-footage requirement is a standard, reasonable occupancy restriction.[8] It imposes a limit, based on the number and size of a dwelling's rooms, on the number of persons who can live there. It is applicable to *all* occupants, regardless of their relationship to each other, and is plainly designed—unlike petitioner's family-composition rule—to prevent the overcrowding of dwellings. See Pet. App. 21a n.4. Petitioner has not alleged that Oxford House-Edmonds, which has six bedrooms, has failed to comply with that maximum-occupancy restriction, and respondents do not challenge its applicability to Oxford House-Edmonds. That maximum-occupancy restriction —not Edmonds' family-composition rule—is the type of

[8] Congress exempted only those occupancy restrictions that are "reasonable," 42 U.S.C. 3607(b)(1), reflecting its awareness that some restrictions—even when tied to the floor space or number of bedrooms in a dwelling—may be unduly restrictive and thus unnecessary to prevent overcrowding. For example, a rule requiring at least 2,000 square feet of living space for each occupant would be unreasonably restrictive because people can live in much smaller spaces without creating health and safety problems. Similarly, an occupancy restriction categorically prohibiting more than one person per bedroom would be unnecessary to avoid overcrowding and would likely be viewed as unreasonably restrictive in light of prevalent occupancy patterns.

restriction that Section 3607(b)(1) exempts from the prohibitions of the FHA.

3. *It was well established when Congress enacted the exemption that family-composition rules are not maximum-occupancy restrictions.* The distinction between maximum-occupancy restrictions, which Section 3607(b)(1) exempts, and rules like ECDC § 21.30.010, governing family composition, was well established when Congress enacted the exemption. Maximum-occupancy restrictions have a purpose, structure, and operation quite different from family-composition rules. Congress acted against the backdrop of that established distinction.

The purpose of maximum-occupancy restrictions is to prevent overcrowding of dwellings in order to protect health and safety. They reflect the view that overcrowding hastens the spread of infectious disease, increases the risk of accidents, and raises psychological tensions.[9] Maximum-occupancy restrictions tend to be

[9] See, *e.g.*, *Home Builders League of South Jersey, Inc.* v. *Township of Berlin*, 405 A.2d 381, 390 (N.J. 1979) (referring to American Public Health Association minimum recommended square footage per occupant as "affect[ing] public health, family stability and emotional well being"); *Kalimian* v. *Olson*, 130 Misc. 2d 861, 862 (N.Y. Sup. Ct. 1986) ("maximum occupancy provisions" requiring 80 square feet per person were "intended to prevent practices common earlier in the century, when landlords overcrowded cramped tenements and rooming house rooms with large numbers of tenants," which caused "fire and health hazards, unsatisfactory provisions as to sanitation, [and] insufficient provisions for light and air"); *Nolden* v. *East Cleveland City Comm'n*, 232 N.E.2d 421, 425-426 (Ohio Common Pleas Ct. 1966) (purpose of square-footage requirement was to prevent overcrowding that "overtaxes the use of plumbing," fosters spread of "infectious disease," including respiratory, digestive, and skin diseases,

framed in one of two ways, either (1) requiring a certain number of square feet of habitable floor area or bedroom floor area per occupant;[10] or (2) limiting the number of persons per room or bedroom.[11] Because health and

elevates risks of "home accidents," and may cause problems in "social development").

[10] Localities frequently adopt this type of maximum-occupancy restriction. See, *e.g.*, ordinances cited in *United States* v. *Badgett*, 976 F.2d 1176, 1177 (8th Cir. 1992); *Kalimian*, 130 Misc. 2d at 862; *Nolden*, 232 N.E.2d at 423; *Sente* v. *Mayor & Municipal Council of City of Clifton*, 330 A.2d 321, 321-322 (N.J. 1974); *Briseno* v. *City of Santa Ana*, 8 Cal. Rptr. 2d 486, 487-488 (Cal. Ct. App. 1992), review denied (Aug. 27, 1992); *Zakaria* v. *Lincoln Property Co. No. 415, Ltd.*, 229 Cal. Rptr. 669, 672 (Cal. Ct. App. 1986).

Several States also regulate occupancy through square-footage requirements. See, *e.g.*, Del. Code Ann. tit. 31, §§ 4106(28), 4115(k), (l), (m) and (q) (1985 & Supp. 1992) (limiting "maximum number of persons" in a dwelling based on its square footage and the size of its bedrooms); Cal. Health & Safety Code § 17922(a)(1) (West 1991) (directing state agency to adopt regulations based on Uniform Housing Code, which contains square-footage requirements); R.I. Gen. Laws § 45-24.3-11(A) and (B) (1991) (imposing minimum-square-footage requirements for each occupant); Mass. Occupancy Stds., Mass. Regs. Code tit. 105, § 410.400 (1994) (same). We express no opinion about whether any particular rule of this type, or of the type referred to in note 11, *infra*, may be unduly restrictive and therefore not a "reasonable" restriction covered by Section 3607(b)(1).

Even Congress has imposed square-footage-based overcrowding standards for dwellings acquired under a federal loan guarantee program for Native Americans. See 12 U.S.C. 1715z-13a(j)(6) (Supp. V 1993) (dwelling must meet either federally mandated minimum-square-footage requirements that vary depending on size of household or "locally adopted standards for size of dwelling units").

[11] For examples of person-per-bedroom restrictions at the state and local levels, see Cal. Code Regs. tit. 25, § 7612(c) (referring to

safety concerns apply to all residents, the rules addressing them do as well.

Family-composition rules, in contrast, define who may constitute a "family" for purposes of single-family zoning. Those rules aim to serve the distinct purpose of fostering the family character of a neighborhood.[12]

ordinance prescribing "maximum number of persons" based on number of bedrooms in dwelling); Cal. Health & Safety Code § 17959.5 (West 1991) (referring to "occupancy standards" that "relat[e] the number of persons in a household to the number of rooms or bedrooms"); 16 Pa. Code § 40.23 (1978) (referring to ordinance prohibiting more than two persons per bedroom); Ariz. Rev. Stat. Ann. § 33-1317(F) (Supp. 1994) ("An occupancy limitation of two persons per bedroom residing in a dwelling unit shall be presumed reasonable for this state and all political subdivisions of this state."); *Gomez* v. *Housing Authority of City of El Paso*, 805 F. Supp. 1363, 1372-1373 (W.D. Tex. 1992) (referring to city housing authority's occupancy standard based on number of bedrooms in dwelling), aff'd, 20 F.3d 1169 (5th Cir.) (Table), cert. denied, 115 S. Ct. 198 (1994); see also *State* v. *Baker*, 405 A.2d 368, 373 (N.J. 1979) (referring to limitations on the number of occupants in reasonable relation to available sleeping and bathroom facilities as an appropriate way to deal with overcrowding).

At the federal level at the time Congress adopted the maximum-occupancy exemption in Section 3607(b)(1), both the Farmers Home Administration (FmHA) and the Department of Housing and Urban Development (HUD) had two-person-per-bedroom rules for dwellings that were used by participants in certain federal housing programs. See 7 C.F.R. Pt. 1930, Subpt. C, Exh. B (VI)(B)(2)(a) at 250 (1988); *Debolt* v. *Espy*, 832 F. Supp. 209, 211-212 (S.D. Ohio 1993) (applying FmHA regulation); 24 C.F.R. 882.109(c)(2) (1988 & 1994) (guideline tied to bedrooms or "living/sleeping" rooms); see also 24 C.F.R. 882.102, 882.209(b)(2), and 887.253(a) (1994) (requiring public housing agencies that participate in HUD "Section 8" program to establish "occupancy standards" tied to the number of bedrooms in the dwelling).

[12] *Village of Belle Terre* v. *Boraas*, 416 U.S. 1, 9 (1974); *Moore* v. *City of East Cleveland*, 431 U.S. 494, 521 (1977) (Burger, C.J., dissenting); *State* v. *Baker*, 405 A.2d at 369, 371. The purposes of petitioner's own family zoning are "[t]o reserve and regulate areas primarily for family living in single-family dwellings" and for other "uses which complement and are compatible with single-family dwelling use." ECDC § 16.20.000 (J.A. 225).

There are two typical ways in which such rules are structured, defining "family" either (1) functionally, as a single housekeeping unit that operates like a family in enumerated respects, without requiring legal or biological relatedness;[13] or (2) as any number of related, but only a limited number of unrelated, persons, sometimes with the additional requirement that the

[13] See *Smith & Lee Assocs.* v. *City of Taylor*, 13 F.3d 920, 925 (6th Cir. 1993) (one or more persons "cooking and living as a single, nonprofit housekeeping unit," but not including "any society, club, fraternity, sorority, association, lodge, coterie, [or] organization"); *Oxford House-Evergreen* v. *City of Plainfield*, 769 F. Supp. 1329, 1333 (D.N.J. 1991) (one or more persons "living together as a single non-profit housekeeping unit whose relationship is of a permanent and domestic character, as distinguished from fraternities, sororities, societies, clubs, associations"); *Oxford House, Inc.* v. *Town of Babylon*, 819 F. Supp. 1179, 1182 n.4, 1183 (E.D.N.Y. 1993); *Oxford House, Inc.* v. *Township of Cherry Hill*, 799 F. Supp. 450, 455 (D.N.J. 1992); *Borough of Glassboro* v. *Vallorosi*, 568 A.2d 888, 889 (N.J. 1990) ("one or more persons occupying a dwelling unit as a single non-profit housekeeping unit, who are living together as a stable and permanent living unit, being a traditional family unit or the functional equivalency [sic] thereof"); *Kirsch Holding Co.* v. *Borough of Manasquan*, 281 A.2d 513, 516-517 (N.J. 1971) ("A collective number of individuals living together in one house under one head, whose relationship is of a permanent and distinct domestic character, and cooking as a single housekeeping unit."); see also cases cited in *Moore*, 431 U.S. at 516-519 nn.8-14 (Stevens, J., concurring in the judgment).

unrelated persons function as a single housekeeping unit.[14]

Federal and state courts have expressly recognized the distinction between maximum-occupancy restrictions and family-composition rules. For example, *Moore* v. *City of East Cleveland*, 431 U.S. 494 (1977), contrasted the definition of "family" at issue there with East Cleveland's separate maximum-occupancy restrictions. The family definition, which the Court held unconstitutional, amounted to "regulation of the family" and "imposed [a] limit[] on the types of groups that could occupy a single dwelling unit." *Id.* at 498, 499 (plurality opinion). The Court distinguished the City's separate

[14] See ECDC § 21.30.010 (J.A. 250); *Village of Belle Terre*, 416 U.S. at 2 (ordinance prohibiting cohabitation of more than two unrelated persons, but permitting occupancy by any number of persons related by blood, adoption, or marriage); *In re Miller*, 515 A.2d 904, 906-908 (Pa. 1986) (ordinance allowing any number of persons "living and cooking together as a single housekeeping unit" amended to allow not more than two unrelated persons "living and cooking together who are not related"); Brief of Township of Upper St. Clair as Amicus Curiae in Support of Petitioner at 3-4 (township code allowing two unrelated persons to live together in single-family zone, provided "the basis for the relationship cannot be therapeutic or corrective or the profit motive," and "family shall not be construed to include a personal home care, a group home, or a group living arrangement"); Brief for the City of Lubbock, Texas as Amicus Curiae in support of petitioner at ii-iii (ordinance allowing "not more than two (2) unrelated persons living and cooking together as a single housekeeping unit"); Brief Amicus Curiae of City of Mountlake Terrace Washington in Support of Petitioner at 2 (city code allowing "not more than six (6) persons not related by blood or marriage living together in a single housekeeping unit in a dwelling unit"); Brief Amicus Curiae of City of Fultondale, Alabama, in Support of Petitioner at 2 (city ordinance allowing up to five unrelated persons to live together in single-family zone).

maximum-occupancy ordinance, which addressed the "problem of overcrowding" by "limit[ing] population density directly, tying the maximum permissible occupancy of a dwelling to the habitable floor area." *Id.* at 500 n.7 (plurality opinion).[15] Similarly, the New Jersey Supreme Court in *State* v. *Baker*, 405 A.2d 368 (1979), described an ordinance prohibiting more than four unrelated persons from living together as having the purpose to preserve "the 'family' character of the municipality's neighborhoods" or "a family style of living." *Id.* at 369, 371. The court contrasted that rule with "space related occupancy limitations," *id.* at 372 n.3, or "area-related occupancy restrictions," *id.* at 373, which "limit[] the number of occupants in reasonable relation to available sleeping and bathroom facilities or requir[e] a minimum amount of habitable floor area per occupant," *ibid.* See Pet. Br. 14 (referring to "[t]he *two types* of regulation * * * addressing *different*" local interests) (emphasis added).[16]

[15] See *Moore*, 431 U.S. at 516, 520 n.16 (Stevens, J., concurring in the judgment) (family definitions seek to serve the "community interest in preserving the stable character of residential neighborhoods," in contrast to rules that seek to "prevent overcrowding" by "plac[ing] a limit on the number of occupants in a household, either in absolute terms or in relation to the available floor space"); *id.* at 539 n.9 (Stewart, J., joined by Rehnquist, J., dissenting) (contrasting the challenged ordinance, which was directed at "preserving the character of a residential area," with the City's separate occupancy restriction, which was aimed at "establishing minimum health and safety standards").

[16] See also *Home Builders League*, 405 A.2d at 389-392 (discussing separate interests in "public health and safety" and in "character of the neighborhood and conserving property values"); *Briseno*, 8 Cal. Rptr. 2d at 490 (distinguishing definition of "family," which addresses "[t]he relationship of individuals living in a dwelling unit," from maximum-occupancy standard, "which

Maximum-occupancy restrictions are common at all three levels of government. See notes 10, 11, *supra*. On the other hand, family-composition rules, including unrelated-persons rules, have traditionally been imposed only through local zoning codes. By making Section 3607(b)(1) applicable to "local, State, or Federal" restrictions on maximum occupancy, Congress gave additional evidence of its clear intention that the Section's exemption apply to maximum-occupancy restrictions and not to family-composition rules.

In describing maximum-occupancy restrictions, courts and legislators have often used language similar to that found in Section 3607(b)(1), further reinforcing the conclusion that Congress intended the exemption to refer to such restrictions, and not to rules defining family composition. For example, the plurality in *Moore* described East Cleveland's occupancy ordinance as a restriction "tying *the maximum permissible occupancy* of a dwelling to the habitable floor area." 431 U.S. at 500 n.7 (emphasis added). Rhode Island's state housing code defines "[p]ermissible occupancy" as "*the maximum number of persons permitted* as a family or household to reside in a dwelling unit or rooming unit based on the square foot per person in habitable rooms." R.I. Gen. Laws § 45-24.3-5(29) (1991) (emphasis added). And a California municipality adopted an ordinance providing that "[n]o dwelling unit shall be inhabited in such a manner that it exceeds *the maximum occupancy* of the dwelling unit" and defining "maximum occupancy" in terms of minimum square footage per occupant. *Briseno*

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speaks merely of how many people can live within the confines of a certain area," because the former "has no relevance to the health and safety of those in a dwelling, certainly insofar as an 'occupancy standard' is concerned").

v. *City of Santa Ana*, 8 Cal. Rptr. 2d 486, 488 (Cal. Ct. App. 1992), review denied (Aug. 27, 1992) (emphasis added).[17] As is true in the case of petitioner's ordinance, definitions of "family" for zoning purposes do not typically contain similar language. Terms such as "maximum occupancy," "occupancy restriction" or "occupancy standard" are absent from ECDC § 21.30.010.

4. *The court of appeals correctly rejected the reasoning of Elliott v. City of Athens.* Petitioner, relying on the Eleventh Circuit's decision in *Elliott* v. *City of Athens*, 960 F.2d 975, cert. denied, 113 S. Ct. 376 (1992), suggests that Congress must have intended to exempt unrelated-persons rules from FHA review because this Court "approved as reasonable" such a rule by affirming its constitutionality in *Village of Belle Terre* v. *Boraas*, 416 U.S. 1 (1974). Pet. Br. 11; see also *id.* at 7, 10; *Elliott*, 960 F.2d at 980. The court below correctly rejected that reasoning. Pet. App. 26a-29a. The fact that a rule is rational for constitutional purposes does not mean that it is the type of rule covered by the FHA's maximum-occupancy exemption. Congress is free to provide statutory protection to classes of individuals that is greater than the protection provided

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[17] See also *Haddock* v. *Department of Community Development*, 526 A.2d 725, 727 (N.J. Super. Ct. App. Div.) ("the number of occupants exceeded the Code maximum permitted for the dwelling units, either by reason of square foot or sleeping room minimum standards"), certification denied, 532 A.2d 228 (N.J. 1987); *Kalimian*, 130 Misc. 2d at 862 (describing rules that required a certain square footage per occupant as "maximum occupancy provisions"); *Laurenti* v. *Water's Edge Habitat, Inc.*, 837 F. Supp. 507, 510 n.3 (E.D.N.Y. 1993) (code provided that "[i]n dwelling units and rooming units the maximum number of occupants shall be one (1) occupant per sleeping room").

by the Constitution to all persons, and it plainly did so in the 1988 Fair Housing Amendments Act.

Petitioner and its amici also rely on the *Elliott* court's belief that municipalities cannot constitutionally impose a maximum on the number of related persons who may live together.[18] They suggest that rules limiting the number of unrelated persons are thus the only rules to which the exemption could constitutionally refer. *Elliott*, however, misreads *Moore* v. *City of East Cleveland*, *supra*. *Moore* held unconstitutional a restrictive definition of "family" for purposes of single-family zoning that included only a few categories of related individuals, and prevented a grandmother from living with her grandsons because the grandsons were cousins rather than brothers. That case did not generally invalidate restrictions on the number of related persons who can live together, but stands for the much narrower proposition that regulation of the composition of a family of biologically related persons, by preferring nuclear families over extended families in single-family zones, violates substantive due process. 431 U.S. at 498-499 (plurality opinion); see also *id.* at 503-504 (plurality opinion). The *Moore* plurality indeed emphasized that, "[o]f course, the family is not beyond regulation," *id.* at 499, and noted with approval the separate City ordinance that "limit[ed] population density directly, tying the

[18] See Pet. Br. 22, quoting *Doe* v. *City of Butler*, 892 F.2d 315, 321 (3d Cir. 1989); *id.* at 29; Brief of the International City/County Management Ass'n et al. as Amicus Curiae in Support of Petitioner at 15; Brief Amicus Curiae of Pacific Legal Foundation in Support of Petitioner at 9-10, 12-13; see also *Elliott*, 960 F.2d at 980-981, citing *Doe*, 892 F.2d at 321 (municipality "could not constitutionally limit the number of related persons living together"); but see *id.* at 985-986 & n.1 (Kravitch, J., dissenting) (criticizing majority opinion).

maximum permissible occupancy of a dwelling to the habitable floor area," *id.* at 500 n.7.[19] Petitioner itself acknowledges (Br. 7, 14) that it applies the square-footage requirements of the UHC to related family members as well as to units of unrelated people. That maximum-occupancy restriction is precisely the type that applies to "all occupants," whether related or unrelated, and to which the FHA exemption refers.[20]

[19] Justice Stevens, whose vote was necessary to the result in *Moore*, expressly stated that "[t]o prevent overcrowding, a community can certainly place a limit on the number of occupants in a household, either in absolute terms or in relation to the available floor space." 431 U.S. at 520 n.16 (Stevens, J., concurring in the judgment).

[20] If Congress had intended categorically to exempt zoning rules designed to preserve the character of single-family neighborhoods, as petitioner asserts, it probably would not have drafted the language of Section 3607(b)(1) to focus on numerical limitations. Many municipalities define "family" for purposes of single-family zoning without reference to numbers of unrelated persons in a family group, but instead rely on the degree to which the group functions like a traditional biological family. See page 23 & note 13, *supra*. Definitions of family that lack any numerical element are aimed at preserving the tranquility and stability of single-family neighborhoods, but in the absence of any numerical reference they are not even arguably within the language of the exemption. See *Smith & Lee Assocs.*, 13 F.3d at 924 n.5, 929-932 (holding that Section 3607(b)(1) did not apply because "[n]othing in [the city's] zoning ordinance, including its definition of family, places restrictions on the maximum number of occupants"); *Oxford House, Inc.* v. *Town of Babylon*, 819 F. Supp. at 1184 n.7 (holding exemption inapplicable because town's family definition "does not contain any maximum limitations as to the number of related *or* unrelated persons who can occupy a single-family dwelling") (emphasis added); see also *Oxford House-Evergreen*, 769 F. Supp. at 1333, 1344-1346 (subjecting to reasonable-accommodation analysis family definition that contained no numerical element). It would be odd to read Section 3607(b)(1) as

B. The Legislative History Confirms That Congress Did Not Intend The Exemption To Apply To Family-Composition Rules

To the extent that there is any ambiguity in the text of Section 3607(b)(1), the legislative history of the section confirms that Congress's purpose in enacting the exemption was to authorize reasonable restrictions on overcrowding, not rules that limit unrelated persons. The Report of the House Judiciary Committee accompanying the 1988 amendments to the FHA makes this clear. The complete description of the exemption in the section-by-section analysis is as follows:

> *Section 6(d)* amends Section 807 to make additional exemptions *relating to the familial status provisions.*[21] These provisions are not intended to limit the applicability of any reasonable local, State, or Federal restrictions on the maximum number of occupants permitted to occupy a dwelling unit. A number of jurisdictions *limit the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit.* Reasonable limitations by governments would be allowed to continue, as long as they were *applied to all occupants*, and did not operate to discriminate on the basis of race, color, religion, sex, national origin, handicap or familial status.

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exempting numerically based but not nonnumerically based definitions of family, especially in view of holdings that the former are more likely to be arbitrary and restrictive than the latter. See, *e.g.*, *Borough of Glassboro*, 568 A.2d at 891-894; *City of Fayetteville* v. *Taylor*, 353 S.E.2d 28, 29 n.1 (Ga. 1987).

[21] The significance of this reference to the familial-status provisions is discussed at pages 33-36, *infra*.

H.R. Rep. No. 711, 100th Cong., 2d Sess. 31 (1988) (J.A. 162-163) (emphasis added). This paragraph is the only reference in the Report to Section 3607(b)(1).[22]

The House Report reinforces in at least four ways the conclusion that Section 3607(b)(1) does not cover petitioner's family-composition rule. *First*, the Report states that the exemption protects only those restrictions that are "applied to all occupants." H.R. Rep. No. 711, *supra*, at 31 (J.A. 163). It thus confirms what the statutory text itself makes clear—that the reference to "the maximum number of occupants" refers only to those rules that place an upper limit on the number of *all* occupants. The exemption does not cover rules—such as the family-composition rule at issue here—that limit the numbers of only certain types of occupants, and that do *not* limit total occupancy.

Second, in the only example the House Report gives of the type of rules the exemption was intended to cover, the Report refers to rules that "limit the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit." H.R. Rep. No. 711, *supra*, at 31 (J.A. 163). That illustration reflects Congress's recognition that federal, state, and local governments have an important interest in promoting health and safety by preventing overcrowding. Individual legislators repeatedly characterized the exemption as protecting rules that prevent overcrowding for health and safety reasons. For example, Senator Metzenbaum, a principal sponsor of the legislation,

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[22] The House Report was the only committee report issued in conjunction with the 1988 amendments, and is thus an "authoritative source" for interpreting Congress's intent in enacting the exemption. See *Garcia* v. *United States*, 469 U.S. 70, 76 (1984); *Thornburg* v. *Gingles*, 478 U.S. 30, 43 n.7 (1986).

emphasized that "the bill does not prevent governments from imposing *safety and health related limitations* on the *number of persons who may occupy* a housing unit." 133 Cong. Rec. 3755 (1987) (emphasis added).[23] See also 134 Cong. Rec. 15,857 (1988) (remarks of Rep. Morella) ("This bill respects State and local ordinances regarding the *number of occupants* per unit and other *safety standards*.") (emphasis added).[24] Petitioner's family-composition rule is not a health or safety regulation, but instead aims at fostering the family character of the neighborhood, an interest that Congress did not deem sufficiently important to override the FHA's anti-discrimination prohibition.

Third, although Congress was presumably aware that family-composition rules (including unrelated-persons rules) are common, there appears to be no reference in the House Report—or in the floor debates or hearings—to such rules in connection with the exemption. There is thus no evidence that Congress sought to give absolute protection to municipalities' interests in fostering the

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[23] Because Senator Metzenbaum was a principal sponsor of the legislation, see 133 Cong. Rec. 3723 (1987), his views provide "an authoritative guide to the statute's construction." *North Haven Bd. of Educ.* v. *Bell*, 456 U.S. 512, 526-527 (1982). Accord *Rice* v. *Rehner*, 463 U.S. 713, 728 (1983).

[24] Congress's desire to protect genuine health and safety rules from challenge is consistent with exceptions that it developed specifically in response to the new handicapped protections in the FHA. See 42 U.S.C. 3604(f)(9) ("Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others."); cf. 42 U.S.C. 3602(h)(3) (the term "handicap" "does not include current, illegal use of or addiction to a controlled substance").

family character of neighborhoods even when such regulations exclude handicapped residents. Such evidence of congressional concern applies only to the health and safety interests that overcrowding restrictions address.

Fourth, as the House Report indicates, Congress added the exemption for maximum-occupancy restrictions to the FHA in response to concerns during Congress's consideration of the new prohibition of discrimination on the basis of "familial status." That new provision makes it illegal to discriminate in housing against families containing children under the age of 18. The new prohibition prompted fears that landlords would be forced to allow large families to crowd into small housing units. See, *e.g.*, *Fair Housing Amendments Act of 1987: Hearings on H.R. 1158 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 100th Cong., 1st Sess. 656 (1987) [hereinafter *House Hearings*] (remarks of Rep. Edwards) (questioning whether a landlord must allow a family with 10 children to live in a two-bedroom apartment). The maximum-occupancy-restrictions exemption was enacted to ensure that the prohibition on familial-status discrimination would not give large families the right to violate local rules reasonably designed to prevent safety hazards caused by overcrowding, such as the spread of disease or increased risk of fire.

During floor debates on the proposed legislation in the House and Senate, Members of Congress repeatedly emphasized that the exemption for reasonable restrictions on overcrowding was a response to the new protections for families with children. As explained by Senator Metzenbaum, Congress viewed application of maximum-occupancy restrictions as a situation "where limitations on children in housing units may be valid." 133 Cong. Rec. 3755 (1987). Representative Fish, a

principal sponsor of the legislation in the House, similarly stated:

> Before leaving the subject of familial status, I want to stress that our bill makes it clear that the rights of this newly protected class would not be absolute. * * * [T]he bill would amend section 807 of the existing act to make it clear that reasonable local occupancy and zoning codes concerning the acceptable number of persons per unit would continue to apply.

134 Cong. Rec. 15,659 (1988).[25] Accord *id.* at 15,854 (remarks of Rep. Fish). Senator Helms, an opponent of the amendments, also recognized the validity of maximum-occupancy restrictions designed to prevent overcrowding of dwellings. The familial-status provisions themselves were unnecessary, in his view, because

> there was very little actual bias against children in rental housing. Many of the apartment complexes which did not permit children were efficiency units or one-bedroom apartments which were too small to accommodate families with children and thus were often prohibited from doing so by State and local occupancy rules.
>
> Therefore, Mr. President, health and safety concerns for the most part and not an invidious intent to discriminate against children accounted for the familial restrictions encountered by the majority of families surveyed in the study.

Id. at 19,894.

[25] Because Representative Fish was a chief sponsor of the amendments, his views, like those of Senator Metzenbaum, are entitled to great weight. See note 23, *supra*.

Witnesses in hearings on the legislation similarly warned of the dangers of overcrowding if Congress added a prohibition of familial-status discrimination to the FHA. See *House Hearings* 593, 596, 599-600, 604-605 (statement of Scott L. Slesinger, National Apartment Association). Mr. Slesinger emphasized that "[i]f familial status becomes a protected class, the owners must be able to set reasonable non-discriminatory occupancy limits" to prevent overcrowding, *id.* at 593, and explained that "[m]ost of the building/housing codes in the United States have limitations on the number of occupants by size of the housing units usually defined by number of bedrooms. These restrictions are placed in the codes for safety purposes." *Id.* at 605; see also *id.* at 387 (statement of James B. Morales, Staff Attorney, National Center for Youth Law); accord *id.* at 388-390, 412-413 (statement of Morales); *id.* at 514-515, 517 (American Planning Association, *Housing Discrimination Against Families With Children* 1-2, 4 (May 1984)).

Members of Congress also made the point during the hearings that they viewed the proposed exemption for reasonable maximum-occupancy restrictions as an effective response to the overcrowding concerns expressed by opponents of the familial-status protection. Representative Edwards, a principal sponsor of the legislation in the House, see note 23, *supra*, emphasized that

> the bill does provide that this bill is not going to override State and local zoning laws that are reasonable, that would limit a residence to "x" number of people, maybe per square foot, or number of bedrooms.

House Hearings 413. Senator Specter expressed a similar understanding of the exemption. *Fair Housing Amendments Act of 1987: Hearings on S. 558 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 100th Cong., 1st Sess. 103-104 (1987) [hereinafter *Senate Hearings*].[26]

C. Exempting Petitioner's Family-Composition Rule From The Fair Housing Act Would Undermine The Act's Goal Of Eliminating Zoning Barriers That Exclude Group Homes For Handicapped Individuals

This Court must interpret the FHA's exemption to avoid a result that is "plainly at variance with the policy of the legislation as a whole." *United States* v. *American Trucking Ass'ns*, 310 U.S. 534, 543 (1940) (citation omitted). Adopting petitioner's reading of the exemption would conflict with that basic principle. Indeed, petitioner's construction threatens to undermine one of the principal goals of the FHA amendments—to remove obstacles that prevent handicapped persons from living "in the residence of their choice in the

[26] Senator Specter had the following exchange with a witness in discussing the familial-status provisions of the proposed legislation:

> [Witness:] * * * As I understand the legislation, however, Senator, nothing in the legislation does away with requirements in terms of overcrowding; that is, you know, the number of occupants per bedroom, and so forth, would be a normal and legal situation.
>
> [Senator Specter:] Well, I think that is so, but I think we have to get a handle on how many families with children are discriminated against, how widespread a problem it is, to show that there is a real need to attack it on the national level.

Senate Hearings 103-104.

community." H.R. Rep. No. 711, *supra*, at 24 (J.A. 148). In enacting the amendments, Congress was particularly concerned about discrimination caused by facially neutral zoning rules that limit the ability of persons with handicaps to live in group homes in residential areas. *Ibid.*

Unrelated-persons rules are among the most significant of the zoning obstacles preventing persons with disabilities from establishing group homes in residences of their choice. Such group homes for handicapped persons typically require at least six persons for both therapeutic and economic reasons. See 42 U.S.C. 300x-25(a)(1) (Supp. V 1993) (establishing federal loan fund for group homes of not less than six recovering substance abusers); *City of Cleburne* v. *Cleburne Living Center, Inc.*, 473 U.S. 432, 438 n.7 (1985) (10 or 11 residents required to establish group home for the mentally retarded). Jurisdictions, however, may not generally permit that many unrelated persons to live together in a single-family zone. See H.R. Rep. No. 865, 96th Cong., 2d Sess. 52 (1980) (supplemental views of Rep. Drinan).[27]

[27] During the course of this litigation, the State of Washington acknowledged the importance of protecting the rights of handicapped persons to live in group homes by enacting a new state statute prohibiting municipal laws, regulations, policies or practices that exclude group homes from neighborhoods zoned for single families. Wash. Rev. Code Ann. § 35.63.220 (West Supp. 1994). That statute prohibits not only rules that place requirements on "residential structure[s] occupied by persons with handicaps" that do not equally apply to structures occupied by other groups of unrelated persons, but also expressly prohibits rules that treat such handicapped residences differently from family residences. Because ECDC § 21.30.010 treats a group of handicapped residents differently from a related family, it is invalid under the new state statute. Petitioner's Brief does not

The facts of this case are illustrative. To qualify for a start-up loan under the Anti-Drug Abuse Act of 1988 (ADAA)—the statute under which Oxford House-Edmonds was established—a group home for recovering drug addicts and alcoholics must contain at least six residents. 42 U.S.C. 300x-25(a)(1) (Supp. V. 1993).[28] Moreover, the parties have stipulated that for financial reasons and to maintain the supportive environment necessary for recovery, Oxford House-Edmonds must have between 8 and 12 residents. J.A. 107 (¶ 9). Thus, petitioner's family-composition rule has a devastating exclusionary effect on group homes for recovering substance abusers in general and on Oxford Houses in particular. Petitioner's ordinance also has the effect of excluding group homes for the mentally retarded, the mentally ill, the physically handicapped, and the elderly disabled whenever those residences cannot operate within a five-person limit.

Moreover, acceptance of petitioner's argument would not just exempt five-person limits from challenge under the FHA. Some municipalities define "family" to include

address the implications of that statute for its enforcement of ECDC § 21.30.020.

[28] Congress also adopted the six-person minimum in a statute designed to encourage the establishment of group homes for veterans recovering from substance abuse. See Act of June 13, 1991, Pub. L. No. 102-54, § 8(b)(3)(E), 105 Stat. 271-272, codified at 38 U.S.C. 1720A note (Supp. V 1993). That statute authorizes the Secretary of Veterans Affairs to make loans to nonprofit organizations to help them lease dwellings for use as group homes for veterans who are recovering from substance abuse. See § 8, 105 Stat. 271-272. Like the ADAA, that legislation was modeled on the Oxford House program. See S. Rep. No. 379, 101st Cong., 2d Sess. 117-120 (1990); 136 Cong. Rec. 1641 (1990) (remarks of Sen. Cranston).

no more than *two* unrelated persons. See, *e.g.*, *Village of Belle Terre*, 416 U.S. at 2.[29] Under the construction of the exemption advocated by petitioner, a jurisdiction could thus prevent a group residence consisting of as few as three persons from locating in a single-family residential zone. The court of appeals correctly concluded that such an interpretation of the FHA would undermine a basic goal of the legislation by impeding the "right of handicapped persons to live in the residence of their choice in the community." Pet. App. 24a-25a. A construction of the exemption so at odds with the purpose of the FHA must be rejected. *Spokane & Inland Empire R.R.* v. *United States*, 241 U.S. 344, 350 (1916) (an exemption may not be interpreted in a way that "would destroy the plain purpose which caused the act to be adopted"). By contrast, the reasonable restrictions on overcrowding that Section 3607(b)(1) was explicitly intended to permit are fully compatible with the protections the FHA otherwise extends to group homes for individuals with disabilities, as there plainly was no congressional purpose to immunize group homes from the health and safety protections afforded by those restrictions.

Petitioner argues, however (Br. 8, 18-21, 32-33), that its family-composition rule is consistent with the FHA because the rule subjects unrelated handicapped persons to the same limits as are applied to unrelated nonhandicapped individuals. Petitioner's argument reflects a fundamental misunderstanding of the nature of Congress's prohibition of discrimination against the

[29] Indeed, that is the definition used by some of the amici in this case. See Brief of Township of Upper St. Clair as Amicus Curiae in Support of Petitioner at 3-4; Brief for the City of Lubbock, Texas as Amicus Curiae in support of petitioner at ii-iii.

handicapped in housing. Section 804(f) of the FHA, 42 U.S.C. 3604(f), does not prohibit only facial or intentional discrimination against the handicapped; it also defines as an independent form of discrimination a failure to make reasonable accommodation in the application of facially neutral regulations to the handicapped. The duty to make reasonable accommodation often demands that rules be altered or waived in order to take into account the special needs of disabled persons.[30] Because many disabled persons require group living arrangements, accommodations in local zoning rules may be necessary in order to avoid the discriminatory impact prohibited by the FHA. As the Court acknowledged in *City of Cleburne*, handicapped persons, because of their handicaps, often are unable to live in single-family neighborhoods except in group homes.[31] Categorically excluding group homes from those neighborhoods "deprives the

[30] See, *e.g.*, *Majors* v. *Housing Auth. of County of DeKalb*, 652 F.2d 454, 458 (5th Cir. 1981) (reasonable accommodation under Rehabilitation Act of 1973 requires housing authority to make limited exception to "no pet" rule for persons whose handicap requires them to have a dog); *Oxford House, Inc.* v. *Town of Babylon*, 819 F. Supp at 1186 n.11 (exception to four-unrelated-persons rule required for handicapped group because they were entitled not merely "to be treated the same as other groups," but "to *preferential* treatment under § 3604(f)(3)(B)") (citing *Elliott*, 960 F.2d at 987 (Kravitch, J., dissenting)); Robert G. Schwemm, *Housing Discrimination: Law and Litigation* § 11.5(4)(c), at 11-71 (Sept. 1994) (citing as examples of reasonable accommodation "reserving a parking place for a mobility-impaired tenant closer to his unit than other tenants may be entitled to[,] and waiving a rule against nontenants using the laundry room to allow the friend of a handicapped tenant to do the tenant's laundry").

[31] 473 U.S. at 438 n.6 (noting district court's finding that "[g]roup homes currently are the principal community living alternatives for persons who are mentally retarded").

[disabled] of much of what makes for human freedom and fulfillment—the ability to form bonds and take part in the life of a community."[32] Without access to a group home, many persons recovering from drug and alcohol addiction will be almost certain to relapse. Nonhandicapped persons have no comparable need for group living arrangements. Arguing that a maximum limit on unrelated persons does not violate the FHA because it treats such persons alike regardless of their handicapped or nonhandicapped status is thus similar to arguing that application of a no-animal rule to a blind person who requires a guide dog does not discriminate because the rule is generally applicable.[33]

Placing all single-family zones off-limits to handicapped persons living in group homes could seriously impede the ability to find suitable locations for such homes. Oxford Houses, for example, must have at least six residents to function, and, in fact, often need 10 or more residents. See J.A. 103 (¶¶ 3, 7). As a result, relatively large dwellings are needed. Those are more

[32] *City of Cleburne*, 473 U.S. at 461 (Marshall, J., concurring in the judgment in part and dissenting in part); see *ibid.* ("group homes have become the primary means by which retarded adults can enter life in the community").

[33] Because Section 3607(b)(1) exempts maximum-occupancy restrictions from all of the FHA's nondiscrimination guarantees—not just from the reasonable-accommodation requirement—petitioner's position, if accepted, might be used to argue that family-composition rules are beyond judicial scrutiny even when they are enacted with the *purpose* of excluding disabled persons from single-family zones. Although we believe that a zoning rule adopted with such a discriminatory intent would not be "reasonable" within the meaning of Section 3607(b)(1), this illustration highlights the extent to which petitioner's position could undermine the FHA's effectiveness.

likely to be found in single-family zones than in multi-family zones, which often consist primarily of apartments and condominiums. The evidence in this case shows, for example, that only about 3% of all single-family dwellings in Edmonds are located in areas zoned for multi-family dwellings. Compare J.A. 113 (¶ 4) with J.A. 122 (¶ 3). Closing off 97% of the municipality's single-family dwellings to Oxford House residents severely restricts and may even eliminate their housing options. In addition, Oxford Houses also must be close to public transportation and sited in residential neighborhoods, located "away from illicit drug activity and opportunities for drug and alcohol abuse, to minimize the likelihood of relapse by a resident." J.A. 103 (¶ 3). Forcing handicapped persons to limit their housing search to multi-family zones significantly interferes with their ability to find a dwelling that meets those special needs.[34]

Petitioner's view that it may choose to accommodate handicapped individuals only in "a mixed use, higher density residential zone," Pet. Br. 26, is inconsistent with the FHA's purpose of fully integrating handicapped persons into the mainstream. The 1988 amendments sought to put an end to segregation of handicapped

[34] There is no basis for petitioner's contention (Br. 22-24) that, by focusing on the needs of group homes, the court of appeals impermissibly extended the protections of the FHA to institutions and associations rather than to individuals. Many handicapped persons depend on others, including persons from associations or institutions, to act as their representatives in seeking a home. There is no indication that Congress intended to deprive disabled persons of appropriate housing because they may be unable to locate and secure it on their own. See 42 U.S.C. 3604(f)(2)(C) (prohibiting discrimination against "any person associated with" a handicapped person).

persons. H.R. Rep. No. 711, *supra*, at 18 (J.A. 134).[35] Segregating group homes for the disabled into certain areas defeats a primary therapeutic value of those homes. Such segregation can "decreas[e] the opportunities for [handicapped residents] to associate with persons who are not members of special population groups." General Accounting Office, *An Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled*, App. I, at 27 (1983). Edmonds' higher density zones do not, contrary to petitioner's contention, provide "neighborhood settings indistinguishable from that chosen by Oxford House," Pet. Br. 7, precisely because they lack "the benefits of the single-family zone" that petitioner itself values highly, *id.* at 10.[36]

[35] Other federal statutes illustrate Congress's intent to promote the integration of disabled individuals into residential neighborhoods. See Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 811, 104 Stat. 4324-4331 (1990), codified, as amended, at 42 U.S.C. 8013 (Supp. IV 1992) (authorizing Secretary of HUD to provide financial assistance to allow individuals with disabilities to live in group homes and other congregate living arrangements); 42 U.S.C. 6000(a)(9), 6001(8), 6021 (Supp. IV 1992) (providing financial assistance to States to promote "integration" of developmentally disabled individuals; defining "integration" to include "the residence by persons with developmental disabilities in homes which are in proximity to community resources, together with regular contact with citizens without disabilities in their communities").

[36] Contrary to petitioner's suggestion (Pet. Br. 8-11, 25-26, 32), we do not dispute municipalities' authority under the Fourteenth Amendment to enact and maintain so-called "Euclidian" zoning schemes establishing separate zoning districts for different uses, including single-family residency. See *Village of Euclid* v. *Ambler Realty Co.*, 272 U.S. 365 (1926). The FHA's reasonable-accommodation requirement applies only to handicapped persons—

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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not to unrelated persons in general or even to individuals who fall within other protected classes under the Act. The interpretation we support thus could not, contrary to petitioner's contentions (see Br. 19, 25, 29-30), be used to force municipalities to abandon their unrelated-persons rules and to permit all groups of unrelated persons to live in single-family zones. Subjecting zoning rules to scrutiny under the FHA would simply permit the courts to determine, on a case-by-case basis, whether discrimination against the handicapped was present and, at most, require waiver of an unrelated-persons rule for the particular group of individuals with disabilities seeking an accommodation. And even such an accommodation could not be required if it would unduly burden the municipality or fundamentally alter its zoning scheme. Petitioner acknowledges (Br. 29) that an exception for Oxford House-Edmonds "will not damage the City's zoning scheme." The fact-specific issue whether petitioner violated its duty of reasonable accommodation is not before the Court at this time. It will be decided in the first instance by the district court on remand.